



CHAPTER 15
**POST
PROVISIONING**
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KEYWORDS

- **Centre for Child Law** The Centre was established in 1998 and is based in the Faculty of Law at the University of Pretoria. The Centre contributes towards the establishment and promotion of the best interests of children in South Africa through litigation, advocacy, research and education.
- **Educator** The national Department of Basic Education (DBE) defines an educator as ‘any person who teaches, educates or trains other persons at an education institution or assists in rendering education services, or who renders education auxiliary or support services provided by or in an education department’.
- **Legal Resources Centre** The LRC is a non-profit law clinic based in South Africa, with offices in Durban, Grahamstown, Cape Town and Johannesburg. The LRC promotes and protects human rights, and offers legal assistance and advice to vulnerable and indigent people.
- **No-fee schools** Public schools that are declared no-fee schools do not charge school fees. The names of the no-fee schools are published in a Provincial Gazette and the criteria to determine the no-fee schools are based on the economic level of the community around the school.
- **Post provisioning** A process that determines the number of educators allocated to specific schools. It ensures that an adequate learner-to-educator ratio exists in classrooms. This process is expressly required by the relevant legislation governing education.
- **School Governing Body** The South African Schools Act gives parents, educators and high-school students the right to form school governing bodies (SGBs) and to make policies concerning issues such as language, religious instruction, school fees, and a code of conduct for learners. An SGB consists of the principal, elected members (who can be parents of learners in the school, educators at the school, staff members who are not educators and learners at the school) and co-opted members (non-voting members).
- **Learner-to-educator ratio** The learner-to-educator ratio (LER) is the average number of learners per educator at a specific level of education, or for a specific type of school, in a given school year. Educators include other staff at schools, including principals.

OVERVIEW

South Africa is facing an education crisis, and one of the factors contributing to this crisis is the shortage of educators in many schools. This problem is particularly severe in Limpopo and Mpumalanga, though it remains a problem throughout the country. For the most part, educator shortages are caused by an incorrect allocation of educators to schools. As a result, some schools end up with far more educators than they need, while other schools have too few.

Post provisioning is the name given to the process of assigning educators to schools across South Africa. It is a mechanism that aims to ensure that each school is allocated the correct number of educators.

The Member of the Executive Council (MEC) for Education in a province will determine the number and allocation of educator posts, referred to as the ‘educator post establishment’ or ‘post basket’. Once the whole educator post establishment is determined for the province, posts are then allocated to schools.

This process is governed by the Employment of Educators Act 76 of 1998 and the policy that comes from it.

In order to determine the correct number of educators for a particular school, the following factors are considered:

- The number of learners at the school;

- The number of learners with special educational needs at the school;
- The number of grades each school consists of;
- The subjects offered by a particular school.

In each province, posts are allocated to schools by the head of the provincial education department (PED). In practice, this is done by an official at the PED using a computerised model. The office of the Head of the Department (HOD) will issue each school with an allocation of posts each year. There are various mechanisms in place that then make sure that an educator is appointed to each of these posts.

If these mechanisms function well, there will not be an issue with educator shortages at some schools

and too many educators at others. The mechanism should ensure a more equal distribution of educators to schools. In turn, this will increase the quality of education at these schools.

This chapter will examine the steps that are to be taken by both the Provincial Departments of Education and the schools in the post provisioning process. It outlines what common problems occur, how these should be addressed, and how to secure payment of educators from the PED.

The chapter will also explore ways to compel the PED to fulfil its obligations in terms of the post provisioning model without resorting to court action. It will conclude with a brief discussion on court cases that have already taken place that deal directly with problems in post provisioning in South Africa.

Lastly, this chapter will discuss why it is important that the post provisioning process works well in terms of addressing inequalities in the education system.



LAW AND POLICY

The post provisioning process is set out in three pieces of legislation:

- Employment of Educators Act 76 of 1998 (EEA)
- South African Schools Act 84 of 1996 (SASA)
- Labour Relations Act 66 of 1995 (LRA).

It is also necessary to consider the various policies implemented by the DBE that come directly from this legislation.

The Post Provisioning Model envisages a process to be followed annually for each province, in which the

MEC calculates the number of teaching posts required by the province, and the HOD calculates the number of teaching posts required by each public school in the province and then allocates educators to vacant posts. The aim of

the PPM is to make sure that all schools are staffed adequately and run optimally.

While the outline of the process is contained in the legislation mentioned above, provinces may depart slightly from the standard model.



CALCULATING POST ESTABLISHMENTS

The process begins with the calculation of posts required by the province.

Section 5(1)(b) of the EEA states that 'the educator establishment of a provincial department of education shall consist of the posts created by the Member of the Executive Council'. In other words, before an individual school's post establishment is determined, the MEC must establish the overall *provincial* post establishment. This is the overall number of posts available for educators in a particular province that the province can then distribute to schools for the following academic year. This is often referred to as the post basket. In reality, the declaration of the post basket is largely budget driven. Provincial departments should not spend more than 52 percent of their budget on compensation of educators.

It is only after the MEC for a province has created the provincial post establishment that the HOD of the province can allocate post establishments to individual schools. Individual post establishments provide each school with an indication of the number of educators

allocated to that school. This will also include the post level of the allocated educators and management staff; for example, one principal, one deputy principal, four heads of department and twenty Post Level 1 educators.

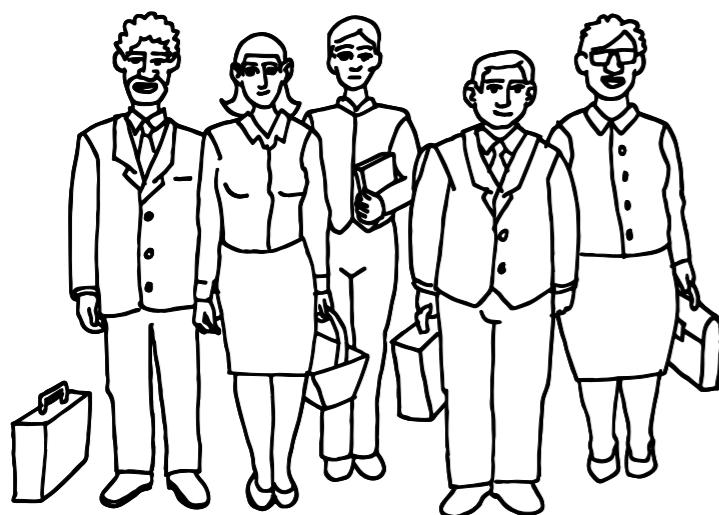
The distribution of the educator posts of a PED over the various post levels must be based on the post level ratio norms, as set out in the Personnel Administration Measures (PAM) determined by the Minister of Basic Education. This notice deals with the number of educators per post level, the provision of posts for education therapists, and the workload of each educator.

A school's post establishment is intended to align with the specific needs of each school. The formula for determining the number of educators needed for each school considers the following:

1. Maximum ideal class size applicable to a specific learning area or phase
2. Number of periods for each educator
3. Need to promote a learning area

4. Size of the school
5. Number of grades
6. Number of languages of instruction
7. Disabilities of learners
8. Access to curriculum/what subjects are offered
9. Poverty (the department is meant to place additional educators at poor schools)
10. Level of funding (from just the PED)

Although the formula for a school's post establishment is comprehensive, in some instances it can lead to skewed learner-to-educator ratios, with some educators teaching classes with low numbers of learners, while others teach classes of more than forty learners. The DBE has a desired learner-to-educator ratio of 40:1 in primary schools, and 35:1 in secondary schools. The ratio is different for special needs schools. This ratio is not in place at all schools across the country, and many schools still suffer from a great shortage of educators.



Some schools are able to obtain a lower learner-to-educator ratio if they offer more subjects, and if they are able to properly diagnose and identify learners with special needs. This often favours the wealthier schools that have the resources to identify learners with special needs, and who are able to offer more subjects through the use of SGB-appointed educators. Poorer schools are forced to offer a limited number of 'core' subjects due to low learner numbers and the shortage of educators funded by the PED.

The MEC and HOD are not the only actors in the post establishment process. They must engage with the recognised unions representing various staff in the education sector. The law states that the provincial post establishment should be decided in consultation with these bodies before the post establishments are created.

- The main unions in South Africa are:
- South African Democratic Educators Union (SADTU) – largest membership
 - National Professional Educator's Organisation of South Africa (NAPTOSA) – second-largest membership
 - South African Educators Union (in Afrikaans: Suid-Afrikaanse Onderwysersunie) (SAOU).

The HOD requires accurate data from each school in order to determine each school's post establishment. Because factors at schools change, school post establishments are not fixed. These factors may include a change in the number of learners enrolled at a particular school, a change of curriculum, or a change to the grading and classification of a school (for example, no-fee to fee-paying) and financial constraints.

Many of the poorer schools are immediately disadvantaged because

they are not able to (or do not) submit accurate data to the PED, and there appears to be little incentive for district offices to ensure that this data is obtained and submitted in the appropriate form. This leaves many schools under-resourced, on an ongoing basis, and discriminates against learners at these schools. There are many reasons that schools do not or cannot submit accurate data. This problem was acute when accurate data of learner numbers was required for the provision of furniture to schools. Poorer schools seldom have administrative support, and their principals are tasked with large administrative loads. Learner numbers fluctuate from year to year, with no overall supervision or planning from district departments. For example, if a school has an excellent grade 12 pass rate, it will probably lead to an influx of learners to that school the following year.



DISTRIBUTION OF POST ESTABLISHMENTS

Once an individual school's post establishment has been created by the HOD, the school is informed, and needs to work with the department to ensure that its posts are filled.

The PED must ensure that schools receive their school post establishments by 30 September of the year before the school calendar year to which they apply. Schools use their post allocation to plan for the year ahead, and to decide their budget. Based on the budget and allocation of educators, the SGB at a fee-paying

school may decide to increase school fees, to increase the funds available to hire additional educators – known as school governing-body educators – and plan their subject and class allocation for each educator.

The timeous release of the post allocation is critical to the preparation of the school's budget. The release

of a school's post establishment can be done in different ways, including printing and posting the post establishment letters directly to schools, printing and distributing letters via the district office, or emailing the schools or district offices. They are commonly collected by the schools from the district offices.

FUNZA LUSHAKA BURSARIES

According to the South African government website, the DBE aims to increase the supply of newly qualified educators in mathematics, science and technology in different phases by providing 38 000 Funza Lushaka bursaries to prospective educators in the medium term.

The consolidated 2020 awards list shows that 13 085 Funza Lushaka bursaries had been awarded for initial educator education by 31 March 2021.

VACANCIES AND ADVERTISING FOR POSTS

Once an SGB knows their post establishment for the year, they set about filling any vacant posts.

The SGB will submit profiles of their vacant substantive (teaching and management) posts to the PED. These vacancies are advertised by the PED in post bulletins. Post bulletins allow educators to become aware of the vacancies in public schools. Educators become potential candidates when they submit their applications to the PED. Each application is then forwarded to the relevant SGB for consideration.

Many provinces have a priority placement facility for educators who have received bursaries from the PED to study. They are known as Funza Lushaka bursary holders. This bursary is aimed at attracting young educators to the profession.

In many provinces, when the overall educator number in the province

equals the number of posts available, the province does not advertise posts in public post bulletins. Instead, it will have an 'internal' post bulletin which only educators already on their system can apply for. This is one of the measures adopted to deal with the redeployment of educators that are additional to the allocated post establishments at some schools to schools that have vacancies. Once this process is finalised, vacant posts may or may not be advertised.

The difficulty with this approach is that it is intensely administrative, and that it is dealt with at provincial level rather than at school level. It also takes time. This means that posts at schools can remain vacant for long periods and may not be filled at the start of the school year.



ALLOCATION OF TEACHERS

The allocation of educators is not altogether straightforward.

Once applications have been sent to a school, it can begin the process of short-listing and interviewing potential candidates. This is done by the SGB. Although the SGB has significant power and discretion with regard to the appointment of educators, the final power to appoint or transfer an educator lies with the head of the PED.

These powers and functions are laid out in both the EEA and Section 20 of the Schools Act. This process generally takes a long time, as the applications for each vacancy are first submitted to the PED. The PED must sort the applications and distribute them to each school. The school has two months in which to complete the interview and recommendation process.

According to Section 6(3)(a) of the EEA, after an SGB makes a recommendation for a post based on their interviews, the final appointment of an educator is made by the PED. However, there are limitations regarding which educators the SGBs may recommend for a post. The

SGB can only recommend a candidate that the HOD has identified as being:

- Suitably qualified for the post concerned
- From a group of educators identified as being in excess of what is required in the province.

Similarly, the SGB must ensure that its recommendation for an appointment takes into account Section 6(3)(b) of the EEA, which provides that all appointments and recommendations must be in line with the principles of equity, representation and redress. All proposed educators must be registered with or be able to register with the South African Council of Educators.

The SGB must submit three names to the PED for each post. If they submit fewer than three names per post, this must be done through consultation with the HOD.

There are a number of other criteria set out in Section 6(3)(b)(i)(v) – for example, giving preference to previously disadvantaged educators – that the SGB

must follow in recommending an educator. If all of these requirements are met, the PED may issue a letter of appointment to the recommended educator. However, if these requirements are not met then the HOD may refuse to appoint the educator, if the appointment does not meet the requirements set out in section 6(3)(b).

A refusal by the HOD to appoint an educator recommended by the SGB may be set aside on review by a court, if it finds that the HOD's decision is incorrect. If this happens, the PED (which must also consider the requirements for the appointment of an educator) may temporarily appoint any suitable candidate on the list, or re-advertise the post. The SGB can appeal this temporary appointment (the process of which will not be dealt with here).

Lastly, if the SGB fails to make a recommendation within two months after being requested to do so, the EEA provides that the HOD is authorised to make an appointment without a recommendation.

PROBLEMS IN POST PROVISIONING, AND HOW YOU CAN FIX THEM

THE PED FAILS TO ADVERTISE A VACANT POST

When the PED fails to fulfil its obligation to advertise a post, there are a number of steps that can be taken by a school to ensure the obligation is fulfilled.

Firstly, if the school's SGB is part of an education-related union, such as the Federation of Association of Governing Bodies of South African Schools (FEDSAS) or SADTU, the school should take the matter up with its union. The union can help to put pressure on the PED to advertise vacant posts.

If the school is not associated with a union, or if this approach fails, the school could communicate directly with the PED. This might involve writing to the PED to highlight the posts allocated to the school in the post establishment, and point out that such positions have not been advertised by the PED. This step should always be taken prior to litigation, to give the department a chance to fulfil its duty.

Only if the PED is unresponsive, or makes it clear that it does not intend to fulfil its obligation, should a school resort to litigation (going to court). Litigation has been successful in the past.

THE PED ADVERTISES A VACANT POST BUT FAILS TO MAKE AN APPOINTMENT

It may happen that the PED does advertise a vacant post. The SGB of the school may then perform its role of recommending appointments, but the PED then fails to make an appointment. In some instances, the PED will not make an appointment because it no longer has the budget available to do so.

When the PED fails to make an appointment, similar steps should be taken as in the situation described above, in which the PED fails to advertise at all.

Schools should not simply fill these posts themselves unless they have the funds to pay the appointed person.

Many instances have occurred in which a school appoints an educator, and tells that educator that in due course the PED will issue a letter of appointment and pay the educator. These educators are often only paid a stipend (a small amount of money to be used for transport and food, but not equal to a salary earned by other educators), a fraction of the amount that they should be paid if appointed by the PED.

If an educator is appointed by a school in this manner, the PED is not obliged to appoint and pay him or her.

It is very important for the school to keep careful records, in the event that it institutes legal action against the PED to recover this expense. This includes records of all communication between itself and the department, proof of the vacancy, date of appointment of the educator, the qualifications of the educator, and records of amounts paid by the school to the educator. Under no circumstances should a school appoint an educator who is not suitably qualified or where they do not have a substantive vacancy.

THE PED APPOINTS BUT DOES NOT PAY AN EDUCATOR

Even when a post has been advertised appropriately by the PED, recommendations have been made by the school, and an appointment has been made by the PED, the PED may fail to pay the appointed educator.

Once again, similar steps should be taken to those in the two scenarios above, in order to put pressure on

the PED to fulfil its obligation. The school should attempt to resolve the issue by taking the matter to the union and approaching the PED, before proceeding with litigation. It is very difficult to force the department to pay an appointed educator if no letter of appointment has been issued. This means it is important to ensure that such a letter is issued.

If the PED fails to issue a letter of appointment, then the educator in question must not begin working at the school. It is the responsibility of the educator in question, as well as of the principal of the school, to ensure that this does not happen.

If there is no letter of appointment, the school and the educator should proceed on the assumption that the educator does not have a contract of employment, and they should not rely on verbal guarantees by the PED that a letter of appointment will be issued. If an educator begins work without a letter of appointment, and the PED fails to pay that educator, there is no contract to rely on in order to force the PED to pay.

CASE STUDY

CENTRE FOR CHILD LAW

In 2012, a number of schools in the Eastern Cape approached the LRC for assistance with their educator shortages. The LRC began by writing to the national DBE to request that the problem be addressed, and the posts be filled. The correspondence was addressed to the DBE at this time because it had acted in place of the Eastern Cape Department of Education (ECDoE) through an intervention in terms of section 100 (1) (b)(i) of the Constitution. When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. This was a decision taken by Cabinet to assume responsibility for the obligation to maintain essential national standards of education in the Eastern Cape Province. As a result of this intervention, the Minister and the DBE were responsible for administrative acts and omissions in the Eastern Cape, along with the HOD and the MEC. Both the DBE and the ECDoE were unresponsive. The LRC launched an application on behalf of a group of named schools and the Centre for Child Law (CCL), which acted in the interests of all schools in the Eastern Cape.

This decision in this case can be found in the law reports for *Centre for Child Law & others v Minister of Basic Education & others (National Association of School Governing Bodies as amicus curiae)*.

The relief sought was that the ECDoE should fill vacant teaching posts with temporary appointments in the short term, and in the longer term with permanent appointments. It also asked the ECDoE to fill all non-educator posts, such as those for cleaners, administrators and office staff.

The matter was settled out of court on all issues (except for that of non-educator

posts, which will not be dealt with in this handbook). The settlement agreement was made an order of court. However, the ECDoE largely failed to comply with the court order, except in respect of the appointment and payment of temporary educators in 2012.

Because the matter had been pursued in the public interest, for the most part the schools represented were nameless; and it was very difficult to assess the impact on those schools of the ECDoE's failure to adhere to the terms of the court order. The LRC decided that the best approach going forward was to enforce the order regarding approximately 10 schools with which the LRC had a relationship, and where the implementation of the order could be properly monitored.

The impact on these schools due to the ECDoE's failure to comply with the court order was that the schools had to appoint educators and pay them out of their own budgets. So the order was enforced by approaching the courts and asking them to force the ECDoE to appoint the educators who had been teaching at the schools, and to pay their salaries from the beginning of that year (1 January 2013).

The Grahamstown High Court was approached, and an order was granted by consent. This means that the ECDoE agreed to the court order. The educators were furnished with letters of appointment.

However, the ECDoE failed to pay the educators in accordance with the order. In response, the LRC applied to the court for an order that the failure to pay an educator in terms of a letter of appointment was a debt, owed by the state to the educator in question, in terms of the State Liability Act. In response to the failure to pay, state assets could be attached in repayment of the debt. This technique was successful in forcing the ECDoE to reimburse the schools.

CASE STUDY

LINKSIDE II

Knowing that many more schools were affected by the failures of the post provisioning process, following *Linkside I* the LRC went ahead with a class action court case in order to address educator shortages throughout the Eastern Cape.

A class action is an action brought on behalf of a large group of people or entities who are in a similar situation. In this case, a class action was brought on behalf of schools in the Eastern Cape that had substantial vacant posts that had not been filled in 2012 to 2014.

This was an opt-in class action, which can be contrasted with an opt-out class action.

An opt-in class action, described by Broodryk, means that the parties who choose to be a part of the action must take positive steps in order to participate, 'failing which they will not be bound by or benefit from the outcome of the litigation'. An opt-out class action means that all parties in the category are automatically included in the class action and its outcome, unless they choose to specifically exclude themselves if they do not wish to participate.

The LRC decided on an opt-in class action, because this allowed the schools that wanted representation to approach the LRC with details of their problems. This avoided the problem that was faced in *Centre for Child Law*, where the case was brought in the public interest but the LRC did not know the exact details of the schools they represented, and so the order was difficult to enforce.

The opt-in approach allowed the LRC to have all the necessary details of the schools they represented, to know exactly which educators needed to be appointed where, and – where proper records had been kept – how much was owed to each school.

About eighty schools in the Eastern Cape chose to opt in to the class action. The order in *Linkside II* was constructed similarly to that in *Linkside I* – with deeming clauses, and specifying that state assets could be attached to enforce reimbursement to schools. This was crucial for effective enforcement of the order.

The outcome of the case was that all named educators were appointed to the vacant posts, and about R82 million was paid out to the schools. The only outstanding clause of the court order with which the ECDoE failed to comply was the publishing

of an open educator bulletin advertising the vacant positions at schools.

As a result, the LRC went back to court to institute 'contempt of court' proceedings. The bulletin was finally published on 1 April 2016. This was the first open educator post bulletin to be published in the Eastern Cape since 2012. Most of the provinces publish educator post bulletins on a regular basis and more frequently.

One interesting aspect of *Linkside II* – and a novel approach, in South African law – was that the court was asked to order that the ECDoE appoint a 'claims administrator'.

The court ordered that a registered chartered accountant act as a claims administrator to receive the R82 million from the ECDoE and distribute the amounts payable to the individual schools. The claims administrator had to verify each school's claim and then pay them the appropriate amount. This meant that no claim was paid unless the school had the paperwork to confirm that they had the vacancy on their post establishment, that the educator had been appointed, and that the educator had been paid by the school (proof of payment was critical).

On the whole, *Linkside II* was a resounding success; but it did not benefit poorer schools that were not able to join the class action or did not have the paperwork to support their claims.

We are not aware of any further litigation on post provisioning since this litigation. It is not clear why this is the case. It may be that public interest organisations with limited resources choose to litigate on other issues such as infrastructure. Attorneys in private practice do not generally engage in issues of this nature, as the legal framework for holding the PEDs financially accountable to schools and/or educators for their failure to appoint and pay educators to fill all vacant posts at schools is not firmly established. Cases of this nature also tend to require a large amount of administrative capacity, as well as proof of: the vacant posts; the steps taken by the schools to fill the posts; their engagement with the PEDs; confirmation that the educator was appointed by the school in the place of the PED to fill a vacant substantive post which should have been filled by the PED; and that the educator assumed that position and was paid by the school. Cases of this nature often seem overwhelming, and not worth the effort unless the sum of money involved is large.

THE IMPORTANCE OF POST PROVISIONING

Post provisioning, in many provinces, does not always function as it should. Recently all provinces have reported a shortage of educators.

Table 14.1: Vacant posts

| PROVINCE | NUMBER OF POSTS ALLOCATED FOR 2021 | VACANT POSTS | VACANCY RATE |
|---------------|------------------------------------|---------------|--------------|
| Eastern Cape | 50 705 | 3 718 | 5.4% |
| Free State | 20 490 | 842 | 3.9% |
| Gauteng | 64 950 | 2 282 | 3.4% |
| KwaZulu-Natal | 87 351 | 7 274 | 5.7% |
| Limpopo | 51 637 | 5 375 | 9.2% |
| Mpumalanga | 32 543 | 2 161 | 6.1% |
| North West | 26 556 | 1 433 | 5.3% |
| Northern Cape | 9 181 | 354 | 4.5% |
| Western Cape | 29 099 | 1 117 | 4.3% |
| TOTALS | 372 512 | 24 556 | 5.8% |

Source: Department of Basic Education, 2021

The Eastern Cape is a province made up of a number of former 'homelands', and its schools are historically overcrowded and poorly resourced. This has resulted in a predominantly rural populace, with poor service provision and a dependency on migrant labour. Despite these historic challenges, the PED has also been criticised for poor management and planning. The situation has been referred to as 'administrative inefficiency at its worst' by the leader of one union.

The additional difficulty faced in the Eastern Cape is that rapid urbanisation has resulted in many rural schools losing learners who move with their families to the cities. These schools are often left with

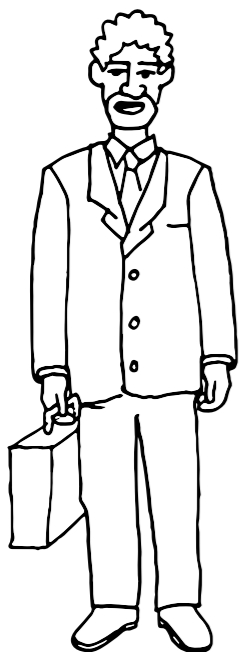
a skewed learner-to-educator ratio (too few learners and too many educators).

While not perfect, post provisioning works best in the Western Cape and Gauteng. Both have strong administrations, and both are home to South Africa's wealthier cities. Their populations are predominantly urban and peri-urban, and are able to access better services than their rural counterparts.

Countrywide there is a problem in getting educators to move from schools where they are teaching to schools where they may be needed. Educators often resist being moved to other schools. The process is also administratively intensive, and relies on accurate data. It is not clear that each

province has an accurate database of where educators are needed and where they are in oversupply. Often the skill set of the educator who is surplus to requirements at the school where he or she is placed will not have the skill set to match the vacant post.

The failure to deal decisively with educators who are surplus to the needs of the school where they are allocated places a huge burden on the budget of each PED. These educators are paid, but are not where they are needed. This means that additional educators need to be appointed and paid where there are vacancies. This is usually the reason why posts are not advertised, as the budget is overburdened by 'educators in addition'.



It is very important that each educator post is filled at the beginning of the term, and that the educators are paid.

PEDs must first redeploy educators that are additional to the allocated post establishments at some schools to schools that have vacancies, before the vacancy can be filled from outside.

Also, parents and learners vote with their feet, and move to better-performing schools. These schools often become overcrowded, because the educators do not move with the learners. Some of the most overcrowded schools have excellent results, but these become difficult to maintain with too few educators and too few classrooms.

Stark inequalities are also seen between better-resourced schools that cater to wealthier income groups and the no-fee schools catering to poorer income groups.

Many schools that have been allocated posts are not able to fill these posts because the PED in question fails to publish regular bulletins. They have a large number of vacant positions. To deal with a shortage of educators, they increase their class size, employ additional educators, ask parents to step in and look after a class, or ask educators to volunteer to teach these classes.

Wealthier schools address this problem by increasing school fees and paying educators (who should have been appointed by the PED concerned) themselves. In some instances, schools will spend their budget on filling educator positions, and are then unable to afford other essential services such as security; maintaining the school may no longer be a priority, resulting in a deterioration of the building and grounds.

However, no-fee schools are the worst affected. They cannot afford to hire extra educators on their own budgets. Many of these schools will ask for a registration fee or a 'donation' from parents in order to pay an educator a small stipend. Some simply fail to employ the required number of educators, and learners have to share educators across different grades or are taught by educators who are not trained to teach a particular subject. Many schools have had to reduce the number of subjects they offer.

In other instances, educators feel compelled to work for no pay or accept a salary that only covers the cost of

transport to and from school, hoping that the PED will pay them at a later stage.

The failure to fill vacancies also has a negative impact on educators who may be qualified, but have not been appointed by the department. Working for a small stipend instead of a proper salary impacts negatively on the morale of educators, who are often unable to pay their own bills and feed their families. The proper appointment and payment of educators is vitally important.

So it is very important that each educator post is filled at the beginning of the term, and that the educators are paid. For this to happen, regular open-post bulletins must be published. The movement of educators due to retirement and death, and between schools, can be catered for in this way. Proper planning by both schools and each PED should ensure that the appropriate number of educators is placed at each school, and that these posts are filled.

This is a goal supported by the national DBE and educator unions; but problems in implementing steps to achieve this goal are common, especially in the Eastern Cape.

Sarah Sephton was appointed as the Director of the Legal Resources Centre's Grahamstown office in 2003. In 2015 she undertook her pupillage and was admitted to the bar. During her time at the LRC, Sephton has litigated extensively on the constitutional right to education, successfully securing valuable resources for many schools in the Eastern Cape.

This publication is based on legal papers drafted by the Legal Resources Centre for the purpose of litigation on post provisioning. Only one of these cases has been reported in the Law Reports. The author was the attorney of record in this litigation.

CASES

Centre for Child Law & others v Minister of Basic Education & others (National Association of School Governing Bodies as amicus curiae) [2012] 4 All SA 35 (ECG). (And subsequent unreported litigation dealing with the enforcement of this order and the payment of educators)

Linkside and Others v Minister of Basic Education and Others (3844/2013) [2015] ZAECHGHC 36 (26 January 2015).

CONSTITUTION AND LEGISLATION

Constitution of the Republic of South Africa 1996.

Employment of Educators Act 76 of 1998.

Labour Relations Act 66 of 1995.

Personnel Administration Measures (PAM) determined by the Minister of Education in terms of the Employment of Educators Act 1998.

South African Schools Act 84 of 1996.

FURTHER READING

Amnesty International 'Broken and unequal: The state of education in South Africa', 2020.

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